George F. Will

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The Prosecution of Mr. Nixon

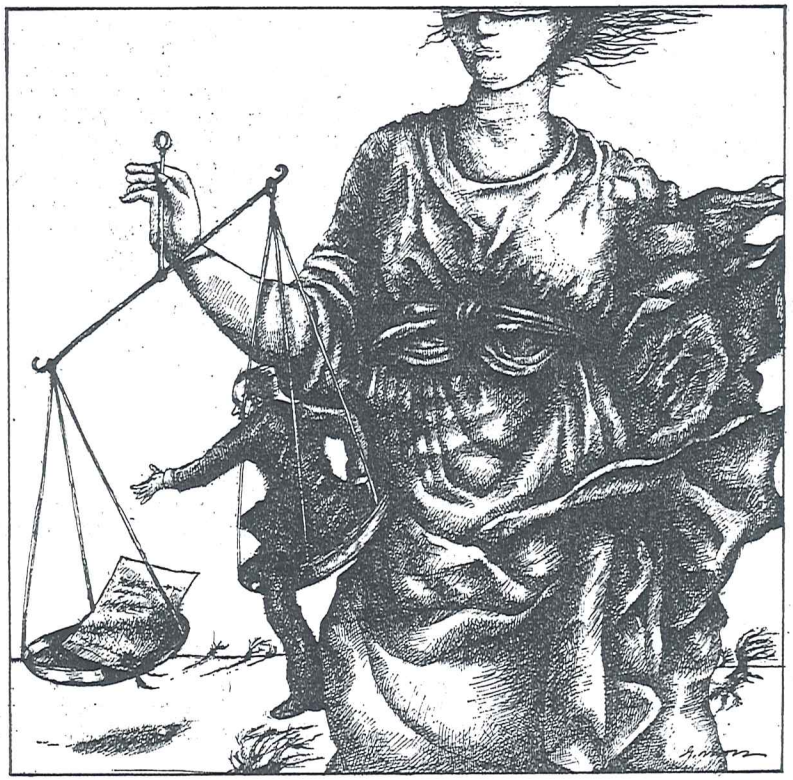
At San Clemente leaves blow across untended lawns into an unused swimming pool. Richard Nixon, still attended by Ronald Ziegler, calls to mind T. S. Eliot's haunting description of "an old man in a dry month/Being read to by a boy."

Prosecuting a forlorn ex-President is not a task sensible Americans relish. But Spiro Agnew has re-emerged from the murk and shadows to demonstrate —inadvertently, of course—one reason why Nixon should be prosecuted.

In a lachrymose letter to The Washington Post, Agnew has denied that he was treated leniently by the law last October. Stressing that the many bribery and extortion charges against him remain "unproved," he says he has suffered disbarment and the loss of his good name just because of what he calls his "decision not to contest a single tax charge."

Agnew, as is his wont, is playing fast and loose with the truth. He knows—he acknowledged in court—that his "no contest" plea to a tax felony was equivalent to a guilty plea. No one is obliged to presume the innocence of a man like Agnew, who plea bargained frantically to escape trial on the mountain of serious charges that he says are "unproved." Agnew almost certainly would be in prison if he had not been able to barter away a high public office in order to escape prison.

Because Agnew's desperate plea bargaining did short-circuit the judicial process, he now is able to sow confusion and bitterness by emphasizing, tendentiously, how little was formally "proved" against him. Because Nixon's resignation derailed the impeachment process, he is in a position to do the same thing. And who doubts that, sooner or later, he will do so?



By Geoffrey Moss

At the end of a spirited House of Commons debate about one of his more debatable policies, Winston Churchill exclaimed: "We must leave that to history!" And then he added, in a loud aside: "And I'll write the history." Some publisher is going to pay Nixon up to $2 million for his version of history, his memoirs, because a lot of people will want to read them—a lot more people than will read the House Judiciary Committee's report that condemns him.

Only prosecution of Nixon—a formal judicial disposition of the issues raised by his remarkable performance in office—can prevent him from polluting American history with Agnewesque rhetoric about how little was really "proved" against him.

The point is not just that prosecution can set the record straight about this pivotal episode in American history. If it turns out that because Nixon once was President he is, de facto, immune from prosecution, then Watergate was not a pivotal episode. It was pivotal if—but only if—it established the principle that Presidents are vulnerable to the law. If Nixon is immune from prosecution even when out of office—immune for whatever reason—then that principle still is not established.

Moreover, the central principle of republican government is subverted by the argument that Nixon should not be prosecuted because he has "suffered enough" in forfeiting his office. Suffering is not punishment. If Nixon escapes punishment for any crimes he committed in office, and escapes just because he once was in office—just because prosecuting a former President is "unthinkable"— then we will have accepted Nixon's anti-republican views about the sanctity of Presidents.

In a Republic, public office is a fiduciary privilege, not a right. Resigning from office—and especially resigning in the nick of time just to escape expulsion and keep a pension—is not punishment. Punishment, like a fine or imprisonment, involves depriving a person of something—property or freedom—that belongs to him. If you say that resignation from public office is a deprivation comparable to punishment by fine or imprisonment, you are saying that a public office is something that belongs to the officeholder, that it is comparable to private property.

The worst and most frequently heard reason for not prosecuting Nixon is that "most Americans" do not want him punished. This is tantamount to establishing a system of special plebiscitory democracy for some people: we should consult public opinion before venturing to apply the law to a former President.

Surely one reason the Goddess of Justice is blindfolded is so that she will not be tempted to glance at Gallup Polls.